Calendar No. 355

84TH CONGRESS, 1st Session | SENATE | REPORT No. 351

AMENDING THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949 SO AS TO IMPROVE THE ADMINISTRATION OF THE PROGRAM FOR THE UTILIZATION OF SURPLUS PROPERTY FOR EDUCATIONAL AND PUBLIC HEALTH PURPOSES

MAY 17 (legislative day, MAY 2), 1955.—Ordered to be printed

Mr. MCCLELLAN, from the Committee on Government Operations, submitted the following

REPORT

[To accompany H. R. 3322]

The Committee on Government Operations, to whom was referred the bill (H. R. 3322) amending the Federal Property and Administrative Services Act of 1949, as amended, so as to improve the administration of the program for the utilization of surplus property for educational and public-health purposes, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments approved by the committee are of a technical nature, and were adopted with a view to clarifying the provisions of the bill as approved by the House of Representatives, without materially changing the purpose and intent of the bill as referred to the Senate.

PURPOSE

The bill provides that surplus personal property carried in a working capital or similar fund in any Federal agency is to be considered for donation to educational or health institutions on the same basis as surplus personal property which is not carried in such a fund. The purpose of the bill is to make clear that the Congress does not intend, and has never intended, to exempt surplus personal property from the donation program merely because it is carried in a working capital fund managed by the Department of Defense or any other agency, regardless of the time it was procured or the accounting classification under which procured or carried on the books of the owning agency.

Such donations would be conditioned upon the receipt of official certification from an appropriate State agency or official that such

property is usable and needed for educational or public health purposes in the State. It provides that no property shall be transferred under the authorized donation program until the Secretary of Health, Education, and Welfare has determined that such agency or official has conformed to minimum standards of operation, prescribed by the Secretary for the disposal of surplus property, in order to insure full utilization of property donated.

The bill would authorize the Secretary of Health, Education, and Welfare, or the head of any other Federal agency designated by the Secretary, to enter into cooperative agreements with State agencies participating in the donation program, whereby such Federal agency may utilize on a nonreimbursable basis the facilities, personnel, and services of the State agency in carrying out the program and, in connection with such utilization, could in turn make available to the State agency property, facilities, personnel, or services of such Federal agency. This would, in part, formalize existing arrangements between the Department of Health, Education, and Welfare and other Federal agencies and such State agencies. It would also remove any legal doubt about the utilization of Federal personnel, space, etc., under these cooperative arrangements.

The bill authorizes the Secretary of Health, Education, and Welfare to impose reasonable terms, conditions, reservations, and restrictions on the use or resale of any single item of donated property having an acquisition cost of $2,500 or more. The bill would terminate restrictions in connection with single item donations of less than $2,500 acquisition cost which have been made under the Federal Property and Administrative Services Act prior to the enactment of this bill. An exception is provided to preserve judicial proceedings in civil and criminal liability cases arising out of violations which occurred prior to or which were pending at the time of enactment.

Restrictions imposed under laws prior to the enactment of the Federal Property and Administrative Services Act of 1949 would be terminated by the bill, subject to a 1-year exception for cases involving judicial proceedings.

The bill further provides that the Secretary of Health, Education, and Welfare shall submit a quarterly report to the Congress showing the acquisition cost of all personal and real property donated during the preceding calendar quarter for distribution to educational or public health institutions in each State, Territory, or possession of the United States.

COMMITTEE ACTION ON AMENDMENTS

The committee amendments would clarify section 1 of the bill, by rearranging the matter contained therein in two subsections. Subsection (a) specifically authorizes the donation for educational or public health purposes of property acquired from working-capital funds. Subsection (b) restates the language of the House bill, which provides that no property shall be transferred under the donable program until the Secretary of Health, Education, and Welfare has received from an appropriate State agency or official a certification that such property is usable and needed for educational or public

health purposes in the State. The committee also added to subsection (b) a requirement that—

> no property shall be transferred pursuant to this paragraph until the Secretary of Health, Education, and Welfare has determined that such agency or official has conformed to minimum standards of operation prescribed by the Secretary for the disposal of surplus property.

A proposal by the Department of Health, Education, and Welfare that each State agency be required to enter into a cooperative agreement with the Secretary, and that the effective date of the amendment be deferred for 180 days to permit the execution of such agreements, was not adopted by the committee.

The committee adopted in subsection 1 (b) an amendment, on the recommendation of all agencies affected by the provisions of the bill, to exempt from the foregoing requirements transfers of such property made by the Secretary of Defense for educational activities of special interest to the armed services, such as maritime academies and military or naval preparatory schools. Section 2 was likewise amended to include this exemption.

Section 2 of the bill, as passed by the House, authorized the Secretary of Health, Education, and Welfare to impose reasonable terms and conditions upon the use of any donated item having an acquisition cost of $2,500 or more. The Department of Health, Education, and Welfare proposed a substitute amendment which would have permitted the Secretary to impose such terms and conditions for a period of 2 years after property so donated had been placed in use by the donee, without regard to the initial acquisition cost of such property. The committee did not adopt that proposal.

The Bureau of the Budget proposed an amendment which would have required each State agency to maintain specified categories of inventory records with respect to property received under the program and to make periodic inventory reports. The committee did not adopt that proposal, believing that the authority conferred upon the Secretary by section 1 (b) to prescribe "minimum standards of operation" for the "disposal of surplus property" confers upon the Secretary ample authority to require the keeping by State agencies of accurate inventory records of property received and the maintenance of cooperation between the Secretary and State agencies in assuring the fullest possible utilization of property so transferred.

Section 4 (a) was amended to include property donated for memorial purposes, in addition to education and health purposes, within the provision which made inapplicable restrictions imposed on the use of property in effect prior to the date of enactment.

Subsections (a) and (b) of section 4 were amended to clarify the intent of the saving clause as applied to judicial proceedings arising out of violations which occurred prior to or were pending at the time of enactment.

Section 5 was amended so as to correct the technical terminology as applied to real property.

A new section 6 was added by the committee in order to clarify existing law, by (*a*) changing the name of the administering agency from the "Federal Security Agency" to the "Department of Health, Education, and Welfare," to the correct name of the present administering agency, and (*b*) to insure that definitions in the original act

will apply to the District of Columbia and the Commonwealth of Puerto Rico.

The Department of Defense proposed an amendment to the bill which would have made funds appropriated to the Department of Health, Education, and Welfare available for reimbursement to the Department of Defense for the value, as determined pursuant to regulations of the Secretary of Defense, of property donated to the States for educational or public health purposes. Such an amendment would have permitted the transfer to the Department of Defense of funds appropriated to the Department of Health, Education, and Welfare in an amount equal to the value of property the Department of Defense donated for educational or public health purposes under the program. The Comptroller General expressed the view that the authority conferred by the bill to donate property for such purposes also constitutes authority for responsible officials of the Department of Defense "to take accounting credit to the extent of impairment to the capitalization caused by the donation."

Accordingly, the committee took the view that any undue impairment of any capital fund by the Department of Defense resulting from the operation of the donable program could be remedied by future appropriations made directly to the affected funds, rather than indirectly by the transfer of funds appropriated for that purpose to the Department of Health, Education, and Welfare.

The committee held the view that the Department of Defense should be required to report in detail to the Committees on Appropriations the value of property transferred from such working capital funds for donation to educational and health institutions as provided under this act. This position accords with the views of the House Committee on Appropriations which, in its report on the Department of Defense appropriation bill, 1956 (H. Rept. 493, 84th Cong.), reported to the House as follows (p. 9):

> WORKING CAPITAL FUNDS
>
> The application of stock and industrial fund principles to certain operation of the Department is a matter of great interest to the Committee. Although this practice was to a limited degree initiated many years ago, the current trend toward an accelerated extension in the application of these type funds to a great number of varied activities of the Department makes the Committee feel that a closer and continuing review of these operations by the Congress is necessary. The Committee is not debating the question of advantages or disadvantages of this type funding in certain of the military operations, but it is interested in the proper application of appropriated funds whether they be derived by direct appropriation or by the acquisition of unexpended balances of funds previously appropriated.
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> Section 405 of the National Security Act Amendments of 1949 provided authority until December 31, 1954, for transfers of unexpended balances to stock and industrial funds operations. On December 22, 1954 there was so approved for transfer a total of $1,119 million. Both Committee hearings and investigations disclosed that the Services had definite plans for only a lesser portion of these funds. Plans for the application of the balance of funds were either tentative or nonexistent. In the light of these developments it is requested that no further application of the currently available funds be made to stock and industrial operations unless such application has the prior approval of this Committee. Further, it is requested that appropriation justifications for fiscal year 1957 and each succeeding year contain adequate explanation of all proposed plans and programs of stock and industrial operations.

The testimony before the committee further indicated that there had been rescissions from Department of Defense stock funds in amounts totaling between 500 and 700 million dollars for each fiscal

year since these working capital funds had been established. The House committee in reporting funds for the Department of Defense for the fiscal year 1956 stated in its report (p. 28):

ARMY STOCK FUND

The Army stock fund has again generated excess cash as a result of the Army's living off its "shelf stock" and cutting inventories down to peacetime levels. The committee recommends that the amount available in the Army stock fund be reduced by $700 million and that it be covered into the Treasury in the same manner as previous rescissions from this fund.

It was the view of the committee that there was no real prospect that such funds would be materially depleted through the withdrawal of the small amount of funds which would be chargeable to the donable program. The evidence indicates that such withdrawals will amount to only a very small fraction of the total withdrawals. It was further the view of the committee that should these funds, in the future, require augmentation because of the donable program, the Appropriations Committees would examine the condition of the funds and include the necessary provision in the annual appropriation acts to reimburse such funds to whatever extent may be determined to be necessary.

LEGISLATIVE HISTORY

Under article IV, section 3, paragraph 2, of the Constitution, the Congress has sole authority over the disposition of Federal property. In the exercise of this authority, the Congress has established policies designed to best serve the interests of the taxpayers, on the premise that they are the actual owners of the property and that Federal agencies which hold and utilize the property are merely acting as public custodians. Whether surplus Federal property should be sold, donated to public institutions, destroyed to keep it from competing with private industry or adversely affecting employment, or disposed of by some other method are problems for the Congress to resolve when enacting enabling legislation.

Since the end of World War I, the Congress has enacted some 15 separate provisions of law making available to educational and health institutions quantities of surplus property acquired largely for war activities. Recognizing that sufficient property has not been available for essential public welfare purposes because of wartime requirements and expenditures, the Congress has repeatedly approved the donation of surplus property to educational and public health institutions when found to be useful and needed for educational and health purposes. The Congress has been fully aware of the small return to the Treasury from the sales of surplus property made to date and the large profits made by speculators, and has found that the general public good is best served under this procedure.

The Federal Property and Administrative Services Act of 1949 (Public Law 152, 81st Cong.), effective on July 1, 1949, provided (secs. 203 (j) and 203 (k)) that property, both real and personal, which becomes surplus to all Federal requirements may, in the discretion of the Administrator of General Services, be transferred for educational purposes, upon a determination by the Secretary of Health, Education, and Welfare that the property is useful and needed for such purposes. The act likewise authorized the transfer of real property for public health purposes under applicable restrictions.

The donable property provisions of Public Law 152 were carefully considered in the light of the various alternative proposals and prior donation legislation.

On September 5, 1950, the Congress approved Public Law 754, for the express purpose of reaffirming and extending the donable provisions of the act to cover personal property useful and needed for public health purposes.

In recommending legislative action which led to the enactment of Public Law 152 in the 81st Congress, this committee reported as follows (S. Rept. No. 338, p. 5):

> As most of the objectives of the Surplus Property Act of 1944 have largely been attained, the bill, in harmony with existing law, dispenses with all priorities and preferences on personal property. The committee believes, however, that, from time to time, there will become surplus to the Government, books, equipment, or other supplies, the sale of which would realize little monetary return but which would be usable by and of great benefit to our schools and colleges. The bill therefore authorizes the Administrator, in his discretion, to donate such surplus property for educational purposes upon the recommendation of the Federal Security Administrator (now the Secretary of the Department of Health, Education, and Welfare). The committee believes that the authority vested in the Federal Security Administrator is broad enough to authorize him to redelegate his authority to some other person designated by him, and that the appropriate designee in this specific instance would be the Commissioner of Education.

At page 13, the report includes the following further explanation of this provision:

> (j) *Donations for educational purposes.*—This subsection authorizes the Administrator of General Services, in his discretion, to donate surplus personal property usable for educational purposes as determined by the Federal Security Administrator, who shall allocate such property on the basis of needs and utilization for transfer by the Administrator of General Services, either direct or through State departments of education, to tax-supported and nonprofit school systems, schools, colleges, and universities. Provision is also made for allocation by the Secretary of Defense, for transfer by the Administrator to educational activities of special interest to the armed services, such as maritime academies or military or naval preparatory schools, of surplus property of the National Military Establishment which the Secretary determines to be usable for such activities. It is expected that the Federal Security Administrator will delegate to the United States Commissioner of Education authority to make determinations and allocations under his general supervision, and that the Secretary of Defense will similarly delegate to an appropriate official his authority under this subsection.

Following the enactment of this provision, the committee recommended its extension by authorizing the donation of surplus personal property to public health services, hospitals, and medical institutions in the same manner as to educational institutions, which became Public Law No. 754, 81st Congress, on September 5, 1950. In its report to the Senate (S. Rept. No. 2140, p. 8) the committee stated:

> Section 4 modifies section 203 (j) of the Federal Property and Administrative Services Act of 1949 by providing that the Administrator is authorized in his discretion to donate surplus personal property, such as equipment, materials, books, or other supplies for public-health purposes, including research, in addition to educational purposes as presently provided for by Public Law No. 152.

DEPARTMENT OF DEFENSE WORKING-CAPITAL FUNDS

On August 10, 1949, following the passage of Public Law 152, approved on July 1, 1949, the Congress approved the National Security Act Amendments of 1949 for the purpose of "promotion of economy and efficiency through establishment of uniform budgetary

and fiscal procedure and organizations" within the Department of Defense. This act, under section 405 (d), authorized the Secretary of Defense to establish working-capital funds when such arrangements would increase the economy and efficiency of property management.

As above indicated, the Congress enacted Public Law 754, effective September 5, 1950, which reaffirmed and strengthened the donable program. Despite this later enactment, the Secretary of Defense issued Regulation 7420.1 on February 1, 1954, establishing principles and procedures with respect to the operation of the stock funds under authority of the above-cited section 405 (d) of Public Law 216. This regulation ignored the intent of Congress as expressed under the original act as well as the later enactment, and has resulted in the sale of a considerable amount of personal property much of which was usable and needed by educational and public health institutions, and should have been made available to them before disposition to private purchasers. The primary purpose of the subject bill is to reaffirm the intent of Congress in its enactment of the donable program and to insure its application to surplus personal property in the custody of the Department of Defense.

HOOVER COMMISSION RECOMMENDATIONS

In its report, submitted to the Congress on Monday, April 18, 1955, the Hoover Commission endorsed the program for the donation of surplus property to health and education institutions, citing the following benefits of the donation program, as reported by its task force:

1. It assists schools and hospitals, particularly in rural and low-per-capita income areas, to secure equipment which otherwise they could not afford to acquire. In such cases the public benefit far outweighs the limited return which the Government would obtain through sale of the surplus equipment to private purchasers.

2. It provides the means for students in trade and vocational schools to secure practical experience in repair and overhaul of technical equipment. The public benefit from such use of equipment, although intangible, appears to be greatly in excess of the slight cash return which could be secured through its sale as scrap or used equipment.

3. In view of the serious shortage of school and civilian hospital facilities, as well as equipment for them, it is a prudent investment of public funds to transfer to the States such excess equipment and supplies which can relieve this shortage. This is particularly true of property which might otherwise be sold as surplus to private individuals or concerns who could in turn resell it to tax-supported institutions at prices greater than they paid the Federal Government.

The Commission, after pointing out certain deficiencies in the existing donable property program, stated that—

The Commission believes that the benefits to the public of the donation program far outweighs the defects which are largely of an administrative nature. Accordingly, we recommend the following administrative improvements:

Recommendation No. 8

That the Department of Health, Education, and Welfare strengthen its current administration of the donation program by:

(*a*) Changing the application for surplus property form to require the State surplus property agency, or the recipient institutions, to certify that within a reasonable time there will be need for the Federal surplus personal property listed on such application.

(*b*) Requiring regional office staffs to give closer attention to applications to insure that the requested transfer of property complies with the policy of the

Congress as expressed in the law; that the property is needed for educational or public health purposes; and that it will be used for such purposes.

(c) Conducting periodic surveys of property in warehouses maintained by the State surplus property agencies, to determine the nature, quantity, and date of acquisition of the inventory and to recapture for Federal agency utilization or disposal those items not needed or not directly related to educational or public health purposes.

(d) Vesting immediate title to transferred personal property (except leased property) in the recipient institution for designated classes of property or amounts under $2,500 to minimize the need for expensive record keeping and follow-up investigations.

The subject bill will provide authority for the Department of Health, Education, and Welfare to adopt these specific administrative procedures.

The Commission called the attention of the Congress to two problems, covered by the pending legislation, which affect the donation program and require action by the Congress, namely: limitations imposed by the establishment of stock funds, mainly in the Defense Department, and proposals to expand the list of eligible donees. It concluded that—

until the problem of reimbursing stock funds is worked out, the stock fund can become a device to immobilize large quantities of unneeded material until such material will have to be eliminated anyway because of obsolescence or for other reasons. In surplus or scrap channels it will bring only meager returns to the Government.

The elimination of these two problems is the primary objective of the provisions of the pending legislation.

The Commission recommended approval of legislation as specifically proposed in H. R. 3322, as follows:

Recommendation No. 9

That the Congress reexamine the provisions of the Federal Property and Administrative Services Act of 1949, as amended, relating to the donation of Federal surplus property, and clarify congressional intent to transfer such property without cost to State educational and public health institutions, notwithstanding Department of Defense requirements for reimbursement of stock funds for transfers of property from such funds.

REQUESTS FOR EXTENSION OF DONABLE PROVISIONS

The committee has received a number of requests for extension of the donable provisions of the Federal Property and Administrative Services Act which includes libraries, State library extension services, and State or local recreational, conservation, welfare, waterworks, irrigation, mosquito control, and sanitation districts, etc.

According to the Hoover Commission, the Department of Health, Education, and Welfare has proposed that the donation program for public health purposes be broadened to include nursing homes, sanitation systems, scientific laboratories, treatment centers for physically handicapped, and malaria control institutions.

A bill (S. 1527) has been introduced by Senator Humphrey, at the request of the Federal Civil Defense Administration, and referred to this committee for consideration, to authorize the disposal of surplus property for civil defense purposes under the donable program.

The House committee stated in its report (H. Rept. No. 206, 84th Cong.) that—

The committee feels strongly that it must at this time give first priority to the clarification of the status of educational and public health institutions without prejudice to other causes which may be considered later.

The Hoover Commission, in its report on surplus property, stated:

While some proposed extensions of the donable program seem irrelevant or trivial, others have considerable merit. However, the Commission observes that the inclusion of other donees, such as cities and counties, would pose complex problems of determining priorities. Also the donations for civil defense purposes, proposed to be allocated by the Federal Civil Defense Administration, would establish another Federal agency as a rival to the Department of Health, Education, and Welfare in allocating surplus property to State and local agencies.

Senator Humphrey has also introduced a bill (S. 1799) to further amend section 203 (f) of the Federal Property and Administrative Services Act of 1949, as amended, as follows:

(f) Subject to regulations of the Administrator, any executive agency may (1) authorize any contractor with such agency or subcontractor thereunder to retain or dispose of any contractor inventory, and (2) dispose of any surplus personal property to any State, Territory, or possession, or to any political subdivision thereof or any tax-supported agency therein, at a price fixed by such agency or determined by negotiation.

The committee proposes to give consideration to S. 1527 and S. 1799 and related proposals at the present session of Congress, with a view to promoting full utilization of surplus Federal property in the best public interest.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (matter omitted enclosed in brackets, new matter printed in italics, existing law in which no change is reported shown in roman):

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

DISPOSAL OF SURPLUS PROPERTY

SEC. 203. (a) * * *

* * * * * * *

(j) (1) Under such regulations as he may prescribe, the Administrator is authorized in his discretion to donate for educational purposes or public health purposes, including research, in [the States, Territories, and possessions] *any State*, without cost (except for costs of care and handling) such equipment, materials, books, or other supplies (*whether or not capitalized in a working-capital or similar fund*) under the control of any executive agency as shall have been determined to be surplus property and which shall have been determined under paragraph (2) or paragraph (3) of this subsection to be usable and necessary for educational purposes or public health purposes, including research. *In determining whether or not property is to be donated under this subsection, no distinction shall be made between property capitalized in a working-capital fund established pursuant to section 405 of the National Security Act of 1947, as amended, or any similar fund, and any other property.*

(2) Determination whether such surplus property (except surplus property donated in conformity with paragraph (3) of this subsection) is usable and necessary for educational purposes or public health purposes, including research, shall be made by [the Federal Security Administrator] *the Secretary of Health, Education, and Welfare*, who shall allocate such property on the basis of needs and utilization for transfer by the Administrator of General Services to tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities, and to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities which have been held exempt from taxation under section 101 (6) of the Internal Revenue Code, or to State departments of education or health for distribution to such tax-supported and nonprofit medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities; except that in any State where another agency is designated by State law for such purpose such transfer shall

be made to said agency for such distribution within the State. *No property shall be transferred (except surplus property donated in conformity with paragraph (3) of this subsection), until the Secretary of Health, Education, and Welfare has received from an appropriate State agency or official a certification that such property is usable and needed for educational or public health purposes in the State, and no property shall be transferred pursuant to this paragraph until the Secretary of Health, Education, and Welfare has determined that such agency or official has conformed to minimum standards of operation prescribed by the Secretary for the disposal of surplus property.*

(3) In the case of surplus property under the control of the National Military Establishment, the Secretary of Defense shall determine whether such property is usable and necessary for educational activities that are of special interest to the armed services, such as maritime academies or military, naval, Air Force, or Coast Guard preparatory schools. If such Secretary shall determine that such property is usable and necessary for such purposes, he shall allocate it for transfer by the Administrator to such educational activities. If he shall determine that such property is not usable and necessary for such purposes, it may be disposed of in accordance with paragraph 2 of this subsection.

(4) The Secretary of Health, Education, and Welfare may impose reasonable terms, conditions, reservations, and restrictions upon the use of any single item of property donated under paragraph (2) of this subsection which has an acquisition cost of $2,500 or more.

(5) The term "State", as used in this subsection, includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(k) (1) Under such regulations as he may prescribe, the Administrator is authorized, in his discretion, to assign to the [Federal Security Administrator] *Secretary of Health, Education and Welfare* for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the [Federal Security Administrator] *Secretary of Health, Education, and Welfare* as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research.

(A) Subject to the disapproval of the Administrator within thirty days after notice to him by the [Federal Security Administrator] *Secretary of Health, Education, and Welfare* of a proposed transfer of property for school, classroom, or other educational use, the [Federal Security Administrator] *Secretary of Health, Education, and Welfare*, through such officers or employees of the [Federal Security Agency] *Department of Health, Education, and Welfare* as he may designate, may sell or lease such real property, including buildings, fixtures, and equipment situated thereon, for educational purposes to the States and their political subdivisions and instrumentalities, and tax-supported educational institutions, and to other nonprofit educational institutions which have been held exempt from taxation under section 101 (6) of the Internal Revenue Code.

(B) Subject to the disapproval of the Administrator within thirty days after notice to him by the [Federal Security Administrator] *Secretary of Health, Education, and Welfare* of a proposed transfer of property for public-health use, the [Federal Security Administrator] *Secretary of Health, Education, and Welfare*, through such officers or employees of the [Federal Security Agency] *Department of Health, Education, and Welfare* as he may designate, may sell or lease such real property for public-health purposes, including research, to the States and their political subdivisions and instrumentalities, and to tax-supported medical institutions, and to hospitals or other similar institutions not operated for profit which have been held exempt from taxation under section 101 (6) of the Internal Revenue Code.

(C) In fixing the sale or lease value of property to be disposed of under subparagraph (A) and subparagraph (B) of this paragraph, the [Federal Security Administrator] *Secretary of Health, Education, and Welfare* shall take into consideration any benefit which has accrued or may accrue to the United States from the use of such property by any such State, political subdivision, instrumentality, or institution.

(D) "States" as used in this subsection includes the District of [Columbia] *Columbia, the Commonwealth of Puerto Rico*, and the Territories and possessions of the United States.

(2) Subject to the disapproval of the Administrator within thirty days after notice to him of any action to be taken under this subsection—

(A) The [Federal Security Administrator] *Secretary of Health, Education, and Welfare* through such officers or employees of the [Federal Security

Agency] *Department of Health, Education, and Welfare* as he may designate, in the case of property transferred pursuant to the Surplus Property Act of 1944, as amended, and pursuant to this Act, to States, political subdivisions, and instrumentalities thereof, and tax-supported and other nonprofit educational institutions for school, classroom, or other educational use;

(B) the [Federal Security Administrator] *Secretary of Health, Education, and Welfare*, through such officer or employees of the [Federal Security Agency] *Department of Health, Education, and Welfare* as he may designate, in the case of property transferred pursuant to the Surplus Property Act of 1944, as amended, and pursuant to this Act, to States, political subdivisions and instrumentalities thereof, tax-supported medical institutions, and to hospitals and other similar institutions not operated for profit, for use in the protection of public health (including research);

(C) the Secretary of the Interior, in the case of property transferred pursuant to the Surplus Property Act of 1944, as amended, and pursuant to this Act, to States, political subdivisions, and instrumentalities thereof, and municipalities for use as a public park, public recreational area, or historic monument for the benefit of the public; or

(D) the Secretary of Defense, in the case of property transferred pursuant to the Surplus Property Act of 1944, as amended, to States, political subdivisions, and tax-supported instrumentalities thereof for use in the training and maintenance of civilian components of the armed forces,

is authorized and directed—

(i) to determine and enforce compliance with the terms, conditions, reservations, and restrictions contained in any instrument by which such transfer was made;

(ii) to reform, correct, or amend any such instrument by the execution of a corrective, reformative, or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(iii) to (I) grant releases from any of the terms, conditions, reservations, and restrictions contained in, and (II) convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by, any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was so transferred: *Provided*, That any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he shall deem necessary to protect or advance the interests of the United States.

(l) The Administrator is authorized to take possession of abandoned and other unclaimed property on premises owned or leased by the Government, to determine when title thereto vested in the United States, and to utilize, transfer or otherwise dispose of such property. Former owners of such property upon proper claim filed within three years from the date of vesting of title in the United States shall be paid the proceeds realized from the disposition of such property or, if the property is used or transferred, the fair value therefor as of the time title was vested in the United States as determined by the Administrator, less in either case the costs incident to the care and handling of such property as determined by the Administrator.

(m) The Secretary of Health, Education, and Welfare, or the head of any Federal agency designated by the Secretary, is authorized to enter into cooperative agreements with State departments of education or health, and with other State agencies, which are responsible for carrying out in the States the program for the utilization of surplus property for educational purposes and health purposes provided for in subsections (j) or (k) of this section. Such cooperative agreements may provide for utilization by such Federal agency, without payment or reimbursement, of the property, facilities, personnel, and services of the State agency in carrying out such program, and for making available to such State agency, without payment or reimbursement, property, facilities, personnel, or services of such Federal agency in connection with such utilization.

(n) The Secretary of Health, Education, and Welfare shall submit, during each calendar quarter, a report to the Senate (or to the Secretary of the Senate if the Senate is not in session) and to the House of Representatives (or to the Clerk of such House if it is not in session) showing the acquisition cost of all personal property donated

under subsection (j) and of all real property disposed of under subsection (k) during the preceding calendar quarter to, or for distribution to, educational or public health institutions in each State, Territory, and possession. The first report under this subsection shall be made with respect to property donated or disposed of during the first calendar quarter which begins after the enactment of this subsection.

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Calendar No. 356

84TH CONGRESS, 1st Session | SENATE | REPORT No. 352

AMENDING THE LEGISLATIVE REORGANIZATION ACT OF 1946 TO PROVIDE FOR MORE EFFECTIVE EVALUATION OF THE FISCAL REQUIREMENTS OF THE EXECUTIVE AGENCIES OF THE GOVERNMENT OF THE UNITED STATES

MAY 17 (legislative day, MAY 2), 1955.—Ordered to be printed

Mr. MCCLELLAN, from the Committee on Government Operations, submitted the following

REPORT

[To accompany S. 1805]

The Committee on Government Operations, to whom was referred the bill (S. 1805) to amend the Legislative Reorganization Act of 1946 to provide for more effective evaluation of the fiscal requirements of the executive agencies of the Government of the United States, having considered the same, report favorably thereon and recommend that the bill do pass.

PURPOSE

The primary purpose of this bill is to provide the Congress with the machinery necessary to enable it to meet its constitutional responsibilities in connection with the appropriation of funds required for the conduct of the Federal Government. It seeks to accomplish this objective by establishing a Joint Committee on the Budget, composed of members of the Senate and House Appropriations Committees, which would assist the Congress in exercising adequate control over the expenditure of public funds by the executive branch of the Government.

S. 1805 is designed to provide the same kind of expert staff facilities and detailed technical information for the Appropriations Committees of the Congress as the Bureau of the Budget provides for the executive branch. Precedent for this action is found in the Joint Committee on Internal Revenue Taxation which has provided joint expert staff facilities and technical information for the revenue committees of both Houses of the Congress for more than a quarter of a century.

NEED FOR LEGISLATION

For many years, the Congress has labored under a tremendous disadvantage in connection with budget requests and justifications. Requests for funds are made by the executive branch, and witnesses who appear before the Appropriations Committees in support of these requested appropriations represent exclusively the point of view of that branch of the Government. Since it is their duty as officers of the Government to support all budget items contained in the President's budget, it becomes their function and responsibility to demonstrate that the specified amounts are necessary. For the most part, these requests are supported by elaborate justifications, based upon extensive research, and by the testimony of technical experts who have devoted many years to the fields in which they are working. Testimony from the public is rarely, if ever, received, and the only manner in which the public interest can be considered and protected, with respect to the purpose for which the funds are sought or their need or adequacy, is through careful scrutiny of requests and justifications by members of the Appropriations Committees. Other Members of Congress must rely largely upon the recommendations of these committees when funds are appropriated by the House and the Senate.

Unfortunately, committee members are so heavily burdened by other legislative duties and responsibilities that they are unable personally to give adequate attention to each budget item. Equally important, however, is the fact that they do not have adequate facilities for obtaining the information necessary to enable them to pass accurate judgment on the necessity for the budget requests. Thus, for the most part, they are forced to rely upon the representations made by the respective initiating agencies of the executive branch, whose representatives appear before these committees in an ex parte type of proceeding for the sole purpose of justifying their requests for funds. As a result, the Congress is often unable to obtain impartial information and facts to enable it to effect needed economies in the operations of the Government. Because the Congress is not adequately equipped to carry out its fiscal responsibilities, many millions of dollars have been appropriated in excess of the actual requirements of the Federal Government. These excesses have, in turn, added to the large recurring deficits which must be passed on to already overburdened taxpayers.

The duties and responsibilities of the Appropriations Committees, in connection with examining and passing upon budget requests for the operation of the Federal Government, have increased tremendously in recent years. These committees are presently staffed with competent professional personnel. It is virtually impossible, however, for their relatively small staffs to examine and evaluate the annual budget with its many thousands of items, running to approximately 1,200 pages each year, within the very limited time available. This precludes the detailed analysis which is so essential to the performance of the congressional function of controlling Federal expenditures.

As important as are the services rendered by the Joint Committee on Internal Revenue Taxation in the revenue field, the proposed Joint Committee on the Budget would be in a position to render far greater service to the Congress in a field that is much broader in

nature and scope. Its functions would include analyses and reports on the details of program operations, a review of the actual administration of authorized functions, and the compilation of data on agency activities and program conformity with legislative authority, for the information of the Appropriations Committees, other committees, and to make such data available to individual Members of the Congress. With this information before them, the Appropriations Committees will be in a position to exercise informed judgment in supplying only such funds as are necessary. The importance of providing this type of service for the committees dealing with the appropriation of public funds is emphasized by the scope of the problems involved and the magnitude of Federal appropriations and expenditures.

This bill represents the culmination of years of careful study by the Committee on Government Operations, in an effort to evolve some method by which congressional fiscal procedures and controls can be improved in order that the legislative branch may assume its rightful position with respect to vital decisions affecting the future of the Nation. Confronted with imposing and increasing threats to the national economy because of ever-mounting spending pressures, both from internal sources and from abroad, it is essential that the Congress delay no longer in meeting this issue head on. This committee believes that S. 1805 offers a sound approach to the solution of these problems, in that it would definitely equip the legislative branch with adequate machinery to examine carefully every item of expenditure, so that appropriations may be limited to only as much and no more than is actually required to provide the minimum funds essential to the successful operation of the Government.

This proposed legislation is designed to remedy serious deficiencies related to appropriation procedures and the expenditure of public funds. It constitutes a positive approach to the elimination of extravagance, waste, and needless or excessive appropriations. The swollen cost of operating the Federal Government, with annual budgets ranging between 60 and 70 billions of dollars, and continued annual deficits of billions of dollars, that pyramid the already astronomical national debt, dictate the compelling necessity of reducing the cost of Government, where it is prudent to do so, in order to restore sound fiscal policies and lead to a balanced national budget.

ACTION BY THE SENATE IN PREVIOUS CONGRESSES

That the Congress is aware of the seriousness of this situation is evidenced by the fact that it has already acknowledged the need for exercising more effective controls over the purse strings, through the enactment of section 138 of the Legislative Reorganization Act of 1946, which was conceived with a view to improving and modernizing congressional procedures in the consideration of the executive budget. This meritorious and well-intentioned effort on the part of the Congress, although failing to attain the objectives for which it was created, has served a useful purpose in pointing up the essential need for finding a workable substitute.

A bill similar to S. 1805 was first introduced on February 19, 1950, in the 81st Congress (S. 2898). In 1952, at the beginning of the 82d Congress, it was reintroduced, with some minor revisions, as S. 913. After public hearings and careful consideration, the Senate Committee on Government Operations unanimously reported S. 913

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favorably. On April 8, 1952, following full debate, the Senate approved the bill by 55 to 8, on a rollcall vote, but it failed of passage in the House.

The bill was again reintroduced in the 83d Congress as S. 833, under the sponsorship of 54 Members of the Senate. It was reported favorably on May 19, 1953, after hearings before the Subcommittee on Reorganization with a further perfecting amendment, passed the Senate on May 23, 1953, under unanimous consent, and was referred to the House Committee on Rules, where no further action was taken.

COMMITTEE AMENDMENTS

The bill, S. 1805, as reported by the committee, contains the same provisions as S. 833, as amended by the committee and approved by the Senate in the 83d Congress, with the following further perfecting amendments:

The joint committee would be authorized to make such rules respecting its organization and procedures as it deems necessary (in lieu of specific rules as set forth in S. 833);

A new subsection has been added (subsec. (j), p. 8, S. 1805) to require that the annual budget shall include an analysis of all active long-term construction programs authorized by the Congress, showing for each the total estimated cost, the estimated expenditures during prior, current, ensuing and subsequent fiscal years, and that all grant-in-aid programs shall be included in the analysis covering grants of indefinite duration, and the annual cost for a 10-year period;

Section (2) (g) (1), which requires estimates of costs of programs authorized by committees of Congress from the departments and agencies projected over a 5-year period of operation, has been extended to provide that, if the chairman of the committee determines that no existing department or agency is primarily concerned with the proposed legislation, the estimate shall be made by the Bureau of the Budget; and

Subsection (g) (3) is amended to provide that the Joint Committee on the Budget shall maintain compilations of all estimates required by the bill and the printing of compilations for the information of Congress, instead of the Appropriations Committees, as provided in the original bill.

PROVISIONS OF S. 1805

Section 1 of the bill would establish a Joint Committee on the Budget composed of 14 members, 7 from the Appropriations Committee of the Senate and 7 from the Appropriations Committee of the House; 4 from the majority party and 3 from the minority party, to be chosen by the respective committees.

The joint committee would be authorized to elect a chairman and vice chairman from among its members at the first regular meeting of each session, with the chairman designated from among the members who are Members of the House of Representatives, and the vice chairman from among the members who are Members of the Senate in even-numbered years; and during odd years, the chairman shall be selected from among the members who are Members of the Senate, and the vice chairman shall be selected from among the members who are Members of the House of Representatives.

The proposed joint committee would be required to inform itself on all aspects of the annual budget of the agencies of the Government, to examine expenditure reports, and to investigate the details of Federal operations in order that the Appropriations Committees might be provided with detailed information concerning each item in the budget and the justifications therefor. It would also be required to fully utilize information emanating from the Joint Committee on Internal Revenue Taxation and all other sources as to estimated revenues and changing economic conditions, in order that a well-considered fiscal program may be devised to hold expenditures to the minimum in relation to anticipated Federal revenues and consistent with essential requirements of Government operations and the national security.

In addition, the joint committee would be authorized to report on and recommend appropriate legislative changes to standing jurisdictional committees so that they may eliminate wasteful practices and correct deviations from programs authorized by the Congress, and to recommend cutbacks in such programs when in the public interest.

To aid the Committees on Appropriations in determining the action necessary to conform to this program, the joint committee is required to submit, at the beginning of each regular session of Congress, and periodically as deemed necessary, schedules of total estimated costs of all programs and projects authorized by the Congress, together with estimated costs of such programs and projects during the current, succeeding, and subsequent fiscal years where the program extends for more than 1 year.

The joint committee, or any subcommittee thereof, is vested with power to hold hearings, issue subpenas, take testimony, and to make such expenditures as are necessary to carry out its functions within the amount appropriated therefor.

The bill authorizes the appointment of a staff director, an associate staff director, and such other professional, technical, and clerical employees as may be necessary to carry out the duties of the joint committee without regard to civil-service rules or the Classification Act of 1949, as amended. The staff director shall be appointed by and responsible to members of the party of which the chairman of the joint committee is a member, and the associate staff director shall be appointed by and responsible to members of the opposition party. The bill also requires that no person shall be employed until data with respect to him, after a thorough investigation of his loyalty and security by the Federal Bureau of Investigation, has been made available to, and his appointment approved by, the joint committee.

The members of the staff would be made available to the Committees on Appropriations, and the several subcommittees thereof, during periods when appropriation bills are pending before the respective bodies, and staff members, upon the written authority of the chairman or vice chairman, are provided with authority to examine fiscal books, documents, papers, and reports of any Federal agency and data related to proposed appropriations included in the annual budget transmitted by the President.

The bill requires that the annual budget shall include an analysis of all active long-term construction programs authorized by the Congress, showing for each the total estimated cost, the estimated expenditures during prior, current, ensuing, and subsequent fiscal years, and that

all grant-in-aid programs shall be included in the analysis covering grants of indefinite duration, and the annual cost for a 10-year period.

Members of the staff of the Bureau of the Budget are to be assigned to attend executive sessions of the subcommittees of the Appropriations Committees with reference to proposed appropriations, as may be required.

The Comptroller General of the United States is directed, at the request of the chairman of the joint committee, to make such investigations and reports with respect to any agency as will enable the joint committee to give adequate consideration to items relating to the agency indicated. Authority is granted to the Comptroller General to employ such technical and professional personnel as may be required to comply with the request of the chairman of the joint committee without regard to civil-service laws, rules, or regulations, and to fix their compensation without regard to the Classification Act of 1949, as amended. This new function of the General Accounting Office would be in addition to its present authority of performing postaudit functions on behalf of the Congress.

Section 2 provides that all committees recommending legislation which would authorize appropriations must include in their reports estimates as to the initial cost of the project or programs and their continuing cost over the succeeding 5 years, based on estimates from the department or agency primarily concerned, after review by the Bureau of the Budget. It provides further that, if the chairman of the committee determines that no existing department or agency is primarily concerned with the proposed legislation, the estimate shall be made by the Bureau of the Budget. The joint committee would be required to maintain compilations of all such estimates, and to print such compilations annually for the information of Members of the Congress.

Section 3 of the bill authorizes the joint committee to recommend joint hearings by the Appropriations Committees and subcommittees thereof, in the interest of expediting action on appropriation measures. This would insure conservation of the time and energy of the members of these committees and administrative officials of the Government, without in any way interfering with the independence of separate committee deliberations and decisions.

In connection with joint hearings provided for in section 3, it merits mention that considerations of time have proved to be one of the two major stumbling blocks of the omnibus appropriation bill approach which was abandoned in the House of Representatives after a single year of trial. Joint hearings would greatly ease that timing problem, because members of the subcommittees of the Senate Appropriations Committee would participate at early dates each year in the joint hearings with their opposite Members in the House of Representatives, and would be prepared to act almost immediately on the many appropriation items which are frequently subjected to little or no change as reported and as passed by the House of Representatives. Further hearings would presumably be limited to those appropriation items where Senate Appropriations subcommittees felt additional information is needed because of substantial cuts or increases in proposed appropriations as finally voted in the House of Representatives.

Manifestly such savings of time would be of great practical value. They should prove to be persuasive elements in stimulating the increased use of joint hearings even though section 3 of the bill recommends such hearings on an entirely optional basis so as not to invade the rights and prerogatives of either House. This advantage should be of special interest to the many Senators and Representatives who hold the omnibus appropriation bill approach in high favor.

HEARINGS IN 82D AND 83D CONGRESSES

Further hearings on S. 1805 were held to be unnecessary, since extensive hearings were held on the predecessor bill, S. 913, during the 82d Congress on May 15, 16, and 17, 1951, at which all witnesses, representing the Congress, State taxpayers associations from all sections of the country, the American Institute of Accountants, National Association of Manufacturers, and various other groups strongly supported the objectives of the bill, although there were some differences as to the detailed provisions of such proposed legislation.

Following these hearings, the committee also held extensive hearings on proposed amendments to the Legislative Reorganization Act of 1946, in carrying out its functions to evaluate the effects of laws enacted to reorganize the legislative branch. At these subsequent hearings numerous witnesses urged that immediate steps be taken by the Congress to improve its fiscal controls. Typical of the statements made in connection with this pending proposal is the following extract quoted from the testimony of Mr. Carter W. Atkins, executive director of the Connecticut Public Expenditure Council, who appeared before the committee on June 13, 1951:

> My own recommendation is that we forget about revising the legislative budget and concentrate our energies in the direction proposed by your committee chairman in S. 913, which provides for the Joint Committee on the Budget. * * * Control of Federal finances will only be achieved by constant and continuous attention to the problem by the most competent professional and technical staff obtainable, working under conditions which favor their retention in office regardless of what party is in power. We need a joint committee to control Federal spending as much as we need the presently highly regarded Joint Committee on Internal Revenue Taxation, and we need a staff qualified to do the job the committee is authorized to perform. A few days of frantic effort in the early days of the Congress and a half-hearted declaration of congressional intent, as expressed in a resolution adopting the legislative budget, are no substitute for good, hard, continuous work by an interested committee backed by highly able staff work. I do not, therefore, recommend that the legislative budget be resuscitated, but rather suggest that this is one sleeping dog that should be allowed to rest in peace, and permanently.

Mr. Frederick J. Lawton, then Director of the Bureau of the Budget, in testifying before the committee on May 17, 1951, pointed up the fact that the tremendous increase in the size and scope of the Federal budget during recent years has produced entirely new and challenging problems for the Congress, and that the rapid growth of the Federal budget to where it now approximates 25 percent of our national income makes it one of the most significant factors in the economic and social life of the Nation. Mr. Lawton stated that the problem the Congress faces in attempting to come to grips more realistically with the Government's financial program is twofold:

> First, there is the problem of identifying and agreeing in Congress on the kind and amount of essential information needed to evaluate both the budget as a

whole and its thousands of components; (and) second, there is the problem of providing within the Congress itself the kind of structure that can make the fullest and most effective use of this information * * *.

The major determinant in any budget is not how much money is needed to run a given activity efficiently. It is rather a determination on whether the activities should be conducted at all and, if so, at what level. Yet decisions on individual activities must be made in the light of a host of factors—the expenditure and revenue outlook, economic conditions, provisions of existing law, and many others.

In commenting specifically as regards the purposes of S. 913, Mr. Lawton concluded—

A joint committee on the budget, with the broad job just outlined would not duplicate the present work of the Appropriations Committees on the appropriation requests placed before them, but would instead provide Congress with a superior review of the whole budget situation. Such a joint committee might also be of further assistance to the Congress in dealing with such matters as determining the format of the budget, which would be most helpful to Congress in acting thereon, reviewing the many types of appropriations now found in our appropriation structure and providing for a simplification thereof, arriving (cooperatively with the executive branch) at a simple system of "scorekeeping" on appropriations and other expenditure authorizations, coordinating and digesting for the Congress the many matters pertaining to Government finance and spending that come to it from many sources and generally assisting the Congress to get on top and stay on top of the budget.

Hearings were held on S. 833 during the 83d Congress, by the Subcommittee on Reorganization, following which the bill was again reported unanimously, with further perfecting amendments.

PAST EFFORTS TO TIGHTEN FISCAL CONTROLS

This proposed legislation would continue the many efforts of the Congress during the past 30 or 40 years to develop more adequate fiscal controls over Federal spending. Among the first of these was the Budget and Accounting Act of 1921, which established the same kind of executive budget in the Federal Government as had been successfully developed in State and local governments. That statute reflected a fairly rapidly expanding pattern of Federal activities, for those days, which had been subjected to the heavy stresses and strains, financial and otherwise, during and after World War I.

Among the basic changes since the 1921 enactment of a national budget system was the transfer of an expanded Bureau of the Budget to the Executive Office of the President under the Reorganization Act of 1939. Subsequent years brought various fiscal problems, notably the recurring deficits in the Federal budget, particularly during the years of World War II. The Employment Act of 1946, with its accompanying creation of a new Council of Economic Advisers immediately under the President, started to weave studies of national economic development and trends into annual budget deliberations. More recently various fundamental aspects of the 1921 budget law were supplemented and modernized by the Budget and Accounting Procedures Act of 1950, which promotes better coordination of Federal accounting and fiscal procedures.

Committee on the Legislative Budget

The vital need for a congressional counterpart of executive budgeting providing for better congressional analysis and consideration of the appropriations which are proposed in the annual executive budget was recognized by the Congress in enacting section 138 of the Legislative Reorganization Act of 1946. This section of the act made an

unsuccessful effort to tighten congressional control of the purse strings. It created a joint committee, composed of the members of the 4 taxing and spending committees of the 2 Houses of Congress and directed that committee (*a*) to compare the estimated total receipts and the total expenditures proposed in the budget for the ensuing year, and (*b*) to recommend a ceiling on total expenditures to serve as a control on the total amount of appropriations, in line with what the Nation can afford to spend. Although every competent authority agrees that the purpose of this provision is eminently desirable, it proved unworkable in the 80th, and succeeding Congresses. This failure was largely attributed to the cumbersome committee setup involved, and to the lack of necessary staff. To help solve this problem in considerable degree, S. 1805 proposes what this committee believes to be a more practical and workable solution.

A somewhat similar approach to the original objectives of Sec. 138 of the Legislative Reorganization Act of 1946, designed to effect a solution to this problem is embodied in a bill, S. 114, introduced by Senator Dirksen in the present Congress, to provide that Federal expenditures shall not exceed Federal revenues, except in time of war or grave national emergency declared by the Congress.

Experience with omnibus appropriation bill

The Senate adopted a resolution on July 2, 1949, requiring the combination of the traditionally separate appropriation measures in a one-package or omnibus appropriation bill (S. Rept. 616), but the House of Representatives declined to report an omnibus bill, because of the insistence of its Appropriations Committee that existing powers were adequate without statutory change. After a voluntary experiment on such a basis for the single fiscal year 1951, the House Appropriations Committee voted to return to the old procedure of reporting separate appropriation bills. A new resolution designed to restore the omnibus appropriation bill, was introduced in the 83d Congress by Senator Byrd, with 46 other Senators as cosponsors (S. Con. Res. 8). It was amended and reported favorably by the Senate Committee on Rules and Administration, on May 12, 1953 (S. Rept. No. 267).

Two factors were predominant in the congressional attitude toward the omnibus appropriation bill. One was the serious delay in passage, caused by the fact that the Senate was prevented from starting work on the many appropriation items until all of them, controversial and noncontroversial alike, were passed by the House. The other was that an omnibus appropriation bill lends itself to the addition of legislative riders. As a practical matter, the President cannot veto those riders which he deems objectionable unless he is willing to veto the whole omnibus bill and risk financial chaos for the Federal Government. To meet this objection three members of the Senate Committee on Rules and Administration formulated S. 2161, in the 81st Congress a partial-item veto bill, which was introduced on June 29, 1949, and referred to this committee. The bill was never reported because of doubtful constitutionality. Under the provisions of S. 2161, the President would have been authorized to veto all or parts of the appropriation bill passed by the Congress, but insofar as any vetoed amounts were reappropriated by the Congress, restored items could not have been again vetoed by the President.

A new bill, S. 1902, introduced in the 84th Congress by Senator Humphrey, and recently referred to this committee, would authorize a

Presidential item veto. It also contains other proposals for a consolidated cash budget, a separation of operating from capital expenditures, the scheduling of legislative action on appropriation measures, and requiring yea-and-nay votes on amendments to appropriation bills.

Percentage cuts in appropriations

Other recent fiscal proposals which have had serious consideration in the Senate include Senate Joint Resolution 108, reported favorably by this committee in the 81st Congress (S. Rept. 498), which combined the features of 3 pending resolutions, in an effort to bring about a more nearly balanced budget. It would have required the President to make an overall reduction of not less than 5 percent nor more than 10 percent in the total amount of appropriations which he had recommended for the fiscal year 1950. Despite vigorous efforts on the Senate floor, this proposal made no progress. It was, therefore, added as a rider to an appropriation bill which failed by a narrow margin to receive the necessary two-thirds majority under Senate rules, after a point of order had been raised.

A similar across-the-board cut was adopted, however, in the General Appropriation Act of 1951, approved September 6, 1950, which required that an overall cut of $550 million be made in the—

> appropriations, reappropriations, contract authorizations, and reauthorizations made by this act for departments and agencies in the executive branch of the Government * * * without impairing national defense.

Similar efforts toward a flat percentage cut in proposed 1952 appropriations were pressed with vigor in the Senate in connection with appropriation measures, but the final determination was that good legislative practices required direct action on specific items, and that an across-the-board cut was not the proper solution to the problem.

This flat percentage cut type of legislative requirement is an acknowledgment, in the view of the committee, that the Congress does not have the necessary facts to direct specifically indicated economies in Government spending. Flat cuts are always subjected to criticism on the ground that the Congress has a responsibility to vote definite reductions in individually proposed appropriation items. It is also contended that the flat percentage cut adversely and improperly affects in the same degree two entirely different kinds of agencies: (*a*) Those whose officials are conducting constructive and useful activities in efficient, economical fashion, as against (*b*) those which are making no efforts to do a good job, and which in some instances have even managed so to pad their budgets that a percentage cut will only reduce them to about the amount they had hoped in the first place to have available for expenditure.

Alternate balanced budget

Another fiscal proposal of basic importance was made in Senate Joint Resolution 131 of September 23, 1949, which would have required the President to submit an alternate balanced budget along with his regular budget to provide for the following fiscal year 1951. When Senate Joint Resolution 131 made no progress, it was proposed in substance as a rider to H. R. 1689, the Executive Pay Raise Act of 1949, and was accepted as such by the Senate. It later was stricken in conference.

The committee in approving S. 913 in the 82d Congress also adopted, by a majority vote, an amendment providing for annual submission

by the President of an alternate balanced budget. The latter budget would parallel the regular budget which the President is required to submit at the beginning of each session of the Congress. While a majority of the committee endorsed this proposal in executive session, the committee preferred that its consideration by the Congress be kept separate from the other aspects of S. 913. An amendment to S. 913 calling for an alternate, balanced budget was submitted by the chairman on the floor of the Senate when the bill was approved April 8, 1952, as directed by a majority of the committee, but was rejected by the Senate, and no similar provision is included in S. 1805 as reported by the committee.

CONCLUSION

The committee unanimously endorses S. 1805 and urges its approval by the Congress in order to help bring about more effective control of the Federal purse. The committee firmly believes that the bill constitutes a realistic program for equipping the Appropriations Committees with adequate staff to provide essential information that will enable those committees and the Congress to arrive at fully informed decisions relative to the essential fiscal requirements of the executive agencies of the Government.

The bill would avoid duplications that are now necessary in providing separate staffs for the two Appropriations Committees, and make them available on a continuing basis. It would also do away with the necessity for either of these committees to procure outside consultants on a temporary basis, or the utilization of personnel of the General Accounting Office, who have other responsible and continuing functions to perform for other committees of the Congress.

Finally, S. 1805 would stimulate joint hearings on pending appropriation measures, without improperly invading the rights and prerogatives of the separate Houses of Congress and of the Appropriations Committees.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (matter omitted enclosed in brackets, new matter printed in italics, existing law in which no change is reported shown in roman):

The Legislative Reorganization Act of 1946, Public Law 601, 79th Congress, is amended as follows:

[LEGISLATIVE BUDGET

[SEC. 138. (a) The Committee on Ways and Means and the Committee on Appropriations of the House of Representatives, and the Committee on Finance and the Committee on Appropriations of the Senate, or duly authorized subcommittees thereof, are authorized and directed to meet jointly at the beginning of each regular session of Congress and after study and consultation, giving due consideration to the budget recommendations of the President, report to their respective Houses a legislative budget for the ensuing fiscal year, including the estimated overall Federal receipts and expenditures for such year. Such report shall contain a recommendation for the maximum amount to be appropriated for expenditure in such year which shall include such an amount to be reserved for deficiencies as may be deemed necessary by such committees. If the estimated receipts exceed the estimated expenditures, such report shall contain a recommendation for a reduction in the public debt. Such report shall be made by February 15.

[(b) The report shall be accompanied by a concurrent resolution adopting such budget, and fixing the maximum amount to be appropriated for expenditure in such year. If the estimated expenditures exceed the estimated receipts, the concurrent resolution shall include a section substantially as follows: "That it is the sense of the Congress that the public debt shall be increased in an amount equal to the amount by which the estimated expenditures for the ensuing fiscal year exceed the estimated receipts, such amount being $."]

JOINT COMMITTEE ON THE BUDGET

SEC. 138. (a) There is hereby created a joint service committee, to be known as the Joint Committee on the Budget (hereinafter in this section called the "joint committee") and to be composed of fourteen members as follows:

(1) Seven Members who are members of the Committee on Appropriations of the Senate, four from the majority party and three from the minority party, to be chosen by such committee; and

(2) Seven Members who are members of the Committee on Appropriations of the House of Representatives, four from the majority party and three from the minority party, to be chosen by such committee.

(b) No person shall continue to serve as a member of the joint committee after he has ceased to be a member of the committee from which he was chosen, except that the members chosen by the Committee on Appropriations of the House of Representatives who have been reelected to the House of Representatives may continue to serve as members of the joint committee notwithstanding the expiration of the Congress. A vacancy in the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as the original selection, except that (1) in case of a vacancy during an adjournment or recess of Congress for a period of more than two weeks, the members of the joint committee who are members of the committee entitled to fill such vacancy may designate a member of such committee to serve until his successor is chosen by such committee, and (2) in the case of a vacancy after the expiration of a Congress which would be filled from the Committee on Appropriations of the House of Representatives, the members of such committee who are continuing to serve as members of the joint committee, may designate a person who, immediately prior to such expiration, was a member of such committee and who is reelected to the House of Representatives, to serve until his successor is chosen by such committee.

(c) The joint committee shall elect a chairman and vice chairman from among its members at the first regular meeting of each session: Provided, however, That during even years the chairman shall be selected from among the members who are Members of the House of Representatives and the vice chairman shall be selected from among the members who are Members of the Senate, and during odd years the chairman shall be selected from among the members who are Members of the Senate and the vice chairman shall be selected from among the members who are Members of the House of Representatives.

(d) The joint committee may make such rules respecting its organization and procedures as it deems necessary: Provided, however, That no measure or recommendation shall be reported from the joint committee unless a majority of the committee assent.

(e) It shall be the duty of the joint committee—

(1) (A) to inform itself on all matters relating to the annual budget of the agencies of the United States Government, including analytical, investigative, audit, and other reports on Federal operations prepared by the General Accounting Office pursuant to section 312 of the Budget and Accounting Act, 1921, the Government Corporation Control Act, and section 206 of the Legislative Reorganization Act of 1946, and by other Federal agencies; (B) to provide the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate with such information on items contained in such budget, and the justifications submitted in support thereof, as may be necessary to enable said committees to give adequate consideration thereto; (C) to consider the President's messages on the state of the Union and the Economic Report, to consider all information relating to estimated revenues, including revenue estimates of the Department of the Treasury and the Joint Committee on Internal Revenue Taxation, to consider essential programs, and to consider changing economic conditions; and (D) to report to the Appropriations Committees of the House of Representatives and the Senate its findings with respect to budget estimates and revisions in appropriations required to hold expenditures to the minimum consistent with the requirements of Government operations and national security;

(2) to recommend to the appropriate standing committees of the House of Representatives and the Senate such changes in existing laws as may effect greater efficiency and economy in government;

(3) to make such reports and recommendations to any standing committee of either House of Congress or any subcommittee thereof on matters within the jurisdiction of such standing committee relating to deviations from basic legislative authorization, or to appropriations approved by Congress, which are not consistent with such basic legislative authorization, or to cut-backs in previously authorized programs which require appropriations, as may be deemed necessary or advisable by the joint committee, or as may be requested by any standing committee of either House of Congress or by any subcommittee thereof;

(4) to report to the Committees on Appropriations of the House of Representatives and the Senate at the beginning of each regular session of the Congress the total estimated costs of all programs and projects authorized by the Congress, together with estimated costs of such programs and projects during the fiscal year underway, the ensuing fiscal year, and subsequent fiscal years, and to make such interim reports as may be deemed advisable.

(f) The joint committee, or any subcommittee thereof, shall have power to hold hearings and to sit and act anywhere within or without the District of Columbia whether the Congress is in session or has adjourned or is in recess; to require by subpena or otherwise the attendance of witnesses and the production of books, papers, and documents; to administer oaths; to take testimony; to have printing and binding done; and to make such expenditures as it deems necessary to carry out its functions within the amount appropriated therefor. Subpenas shall be issued under the signature of the chairman or vice chairman of the committee and shall be served by any person designated by them. The provisions of sections 102 to 104, inclusive, of the Revised Statutes (U. S. C., title 2, secs. 192–194) shall apply in the case of any failure of any witness to comply with any subpena or to testify when summoned under authority of this section.

(g) The joint committee shall have a staff director, an associate staff director, and such other professional, technical, clerical, and other employees, temporary or permanent, as may be necessary to carry out the duties of the joint committee. Such employees shall be employed without regard to the civil-service laws, and their compensation shall be fixed without regard to the Classification Act of 1949, as amended. The staff director shall be appointed by and responsible to the members of the party of which the chairman of the joint committee is a member, and the associate staff director shall be appointed by and responsible to the members of the opposition party. No person shall be employed by the joint committee unless the members appointing him have favorably considered the data with respect to him submitted by the Federal Bureau of Investigation after a thorough investigation of his loyalty and security.

(h) The joint committee shall make available members of its staff to assist the staffs of the Committees on Appropriations of the House of Representatives and of the Senate and the several subcommittees thereof during the periods when appropriation bills are pending.

(i) Professional and technical employees of the joint committee, upon the written authority of the chairman or vice chairman, shall have the right to examine the fiscal books, documents, papers, and reports of any agency of the United States Government within or without the District of Columbia, and data related to proposed appropriations incorporated in the annual budget transmitted by the President.

(j) The annual budget of the United States shall henceforth include a special analysis of all active long-term construction and development programs and projects authorized by the Congress, showing for each the total estimated cost, and the actual or estimated expenditures during prior fiscal years, the current fiscal year, the ensuing fiscal year, and subsequent fiscal years. All grant-in-aid programs shall be included in this analysis, in a separate grouping, showing under the heading "Subsequent Fiscal Years" for grants of indefinite duration the estimated annual cost for a ten-year period.

(k) Qualified members of the staff of the Bureau of the Budget shall, at the request of the Committee on Appropriations of the House of Representatives or the Senate, or any subcommittee thereof, be assigned to attend executive sessions of the subcommittees of the Appropriations Committees and to explain the content and basis of proposed appropriations.

(l) The Comptroller General of the United States shall, at the request of the chairman of the Joint Committee on the Budget, make such investigations and reports with respect to any agency as will enable such joint committee to give adequate consideration to items relating to such agency which are contained in the budget as submitted by the President, and the justifications submitted in support thereof; and, for this purpose, the Comptroller General is authorized to employ technical and

professional personnel without regard to the civil-service laws, rules, or regulations, and fix their compensation without regard to the Classification Act of 1949, as amended.

(m) When used in this section, the term "agency" means any executive department, commission, council, independent establishment, Government corporation, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government. Such term includes the Comptroller General of the United States and the General Accounting Office, and includes any and all parts of the municipal government of the District of Columbia except the courts thereof.

(n) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section. Appropriations for the expenses of the joint committee shall be disbursed by the Secretary of the Senate upon vouchers signed by the chairman or vice chairman.

SEC. 2. Effective at the beginning of the second regular session of the Eighty-third Congress, section 133 of the Legislative Reorganization Act of 1946, as amended, is amended by adding at the end thereof the following new subsection:

"(g) (1) All bills and joint resolutions authorizing appropriations reported from committees of the Senate or the House of Representatives shall be accompanied by reports in writing, which shall be printed; and there shall be included in each such report or in an accompanying document an estimate from the department or other agency of the legislative, executive, or judicial branch of the Government primarily concerned of the probable cost of carrying out the legislation proposed in such bill or resolution over the first five-year period of its operation or over the period of its operation if such legislation will be effective for less than five years.

"(2) Estimates received from departments or agencies under this subsection may be submitted by the committees to the Bureau of the Budget for review, and such reviews, when practicable, shall be included in the reports or accompanying documents before said bills and joint resolutions are reported. If the chairman of the committee determines that no existing department or agency is primarily concerned with the legislation, the estimate shall be made by the Bureau of the Budget.

"(3) The Joint Committee shall maintain compilations of all such estimates, and semiannually shall print those compilations (together with any comment of the Bureau of the Budget) for the information of the Congress."

SEC. 3. Section 139 of the Legislative Reorganization Act of 1946, as amended, is amended by adding at the end thereof the following new subsection:

"(e) The Joint Committee on the Budget is authorized to recommend that joint hearings be held by the Committees on Appropriations of the House of Representatives and the Senate, and of subcommittees thereof; but such joint hearings shall not affect the power of the respective committees, and of subcommittees thereof, to conduct separate additional committee hearings, and shall not affect the independence of committee deliberations and decision. The chairman of each such joint hearing shall be the chairman of the Committee on Appropriations, or of the appropriate subcommittee thereof, of the House in which the bill is pending at the time of the hearing, and the vice chairman shall be the chairman of the Committee on Appropriations of the other House, or of the appropriate subcommittee thereof."

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Calendar No. 357

84TH CONGRESS, 1st Session | SENATE | REPORT No. 353

AMENDING SECTION 3 OF THE TRAVEL EXPENSE ACT OF 1949 AS AMENDED, TO PROVIDE AN INCREASED MAXIMUM PER DIEM FOR SUBSISTENCE AND TRAVEL EXPENSES

MAY 17 (legislative day, MAY 2), 1955.—Ordered to be printed

Mr. JACKSON, from the Committee on Government Operations, submitted the following

REPORT

[To accompany S. 1795]

The Committee on Government Operations, to whom was referred the bill (S. 1795) to amend section 3 of the Travel Expense Act of 1949, as amended, to provide an increased maximum per diem allowance in lieu of subsistence and travel expenses for civilian officers and employees of the Government while traveling on authorized official business within the continental United States, having considered the same, report favorably thereon, with an amendment, and recommend that the bill as amended do pass.

S. 1795 was introduced in response to a request addressed to the President of the Senate by the Director of the Bureau of the Budget. Its objectives were endorsed by the President of the United States in his message to the Congress on Federal personnel management, on January 11, 1955.

The committee amendment struck out a provision in the first section of the bill which would have extended the present act to direct the Director of the Bureau of the Budget to prescribe regulations under which heads of departments and establishments would be authorized, where unusual circumstances of travel are involved and actual expenses exceed the $13 maximum, to determine in advance of such travel a maximum designed to cover actual expenses in lieu of the per diem basis established by this act.

PURPOSE

The purpose of this bill is to permit the heads of departments and agencies, who authorize the performance of official travel, to increase the per diem in lieu of subsistence from the present maximum of $9

to a maximum of $13, in those instances where such amount is needed to defray the normal living expenses of Government employees performing travel on official business away from their designated posts of duty. Evidence submitted to the committee discloses that the current maximum of $9 is inadequate to defray the normal living expenses of employees who are required to travel in high-cost areas. The $13 maximum which this bill would establish is not mandatory. It is intended merely to provide flexibility for the heads of departments and agencies so as to enable them to establish rates between $9 and $13 in those cases where the $9 rate is now inadequate.

Section 2 of the bill proposes to raise the existing $10 per diem allowance to consultants, and other persons employed without compensation, to $15 per diem when in travel status within the continental limits of the United States.

Section 3 would bring civilian employees when traveling as witnesses on behalf of the United States under the provisions of the Travel Expense Act instead of including them under separate legislation, as recommended by the Department of Justice.

A new section 4 has been included in the bill to overcome objections to a similar bill (S. 3200) reported by the committee and approved by the 83d Congress (increasing the maximum per diem allowance from $9 to $12), which would authorize the reimbursement of Members of Congress and employees of the legislative branch for travel expense while on official business on the same basis as other Federal officers and employees.

GENERAL STATEMENT

Based upon a study made by the Bureau of the Budget in 1954, this committee recommended and the Senate approved a bill during the 2d session of the 83d Congress (S. 3200) to increase the present maximum from $9 to $12. The House failed to act on this bill. The language of the bill as approved by the Senate was incorporated as an amendment to H. R. 7774, the Federal Employees Pay Act, later in the session, but the latter bill was vetoed by the President for other reasons.

The President, in his message to the Congress recommending legislation to improve Federal personnel management, on January 11, 1955, stated that—

> The per diem allowance of $9 for civilian employees who travel on official business was established in 1949. Since that time the cost of lodging, meals, and incidental expenses has increased. It is not fair to ask Government employees to defray part of their official travel and subsistence from their personal funds. Recommendations soon will be submitted to the Congress for an appropriate increase in the present rate.

In a letter addressed to the President of the Senate under date of March 8, 1955, the Director of the Bureau of the Budget referred to the President's recommendation and submitted a draft bill, which was referred to the Committee on Government Operations for consideration. Pursuant to the request of the Director of the Budget, the subject bill was introduced in the Senate on April 25, 1955.

HEARINGS BEFORE THE HOUSE COMMITTEE

The Subcommittee on Executive and Legislative Reorganization of the House Committee on Government Operations held hearings on a bill (H. R. 4918) identical to S. 1795, and on two related bills, H. R. 4169 and H. R. 3950, the latter providing for increases in per diem to a maximum of $15. Extensive testimony was submitted to the committee by representatives of the Bureau of the Budget, Civil Service Commission, and the Departments of Agriculture, Interior, Justice, and Defense, all of whom supported the administration bill, H. R. 4918. In addition, representatives from the Government Employees' Council, American Federation of Labor; the National Federation of Federal Employees; the American Federation of Technical Engineers (A. F. of L.); the American Federation of Government Employees; and the committee on legislation for the National Association of Internal Revenue Employees appeared in support of the measure. One of the employee organizations favored an increase to a maximum of $15, as proposed under H. R. 4169 and H. R. 3950.

The evidence submitted at these hearings indicated unanimous agreement among competent authorities that the existing maximum per diem travel allowance of $9 is inadequate to reimburse Federal employees who are in travel status for actual out-of-pocket expenses, and numerous instances were cited where accurate accounts had been kept to illustrate that the actual per diem expense exceeds $13 in practically all metropolitan areas.

COMMENTS OF THE BUREAU OF THE BUDGET

In support of the draft bill as submitted to the Congress, the Director advised the Congress as follows:

> The first section of the draft bill would amend section 3 of the Travel Expense Act of 1949, as amended. It would increase the maximum per diem allowance from $9 to $13 for civilian employees who travel on official business within the limits of the continental United States. It is to be understood, however, and the Standardized Government Travel Regulations will continue to emphasize the fact that the departments and establishments are responsible for seeing to it that travel orders authorize only such per diem allowances within the maximum rate as are justified by the circumstances surrounding the travel. In other words, care is to be exercised to prevent the fixing of a per diem allowance in excess of that required to meet the necessary authorized expenses.
>
> The first section also contains a provision to take care of a very limited number of situations where employees are required to travel on assignments which necessitate personal expenditures well in excess of the maximum rate. In such cases employees would be reimbursed on an actual expense basis in lieu of the per diem basis. The Director of the Bureau of the Budget would prescribe regulations governing the types of situations under which the actual expense basis would be used. Within such regulations, the heads of departments and establishments would prescribe the conditions under which this special reimbursement would be authorized. A maximum allowable amount of reimbursement would be determined in advance of the trip and would be set forth in the order directing the employee's travel. The employee would be reimbursed for his actual and necessary expenses not in excess of the maximum stated in his travel order. [1]
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> Section 2 of the draft bill proposes that the maximum per diem travel allowance for civilians performing work for the Government without compensation be increased from $10 to $15. This would amend section 5 of the Administrative Expenses Act of 1946. At present the $10 maximum applies to travel both within and beyond the limits of the continental United States. Under the proposal the maximum would apply only to travel within the limits of the continental United States. For travel outside such limits the maximum per diem rates established

[1] This provision of the bill was not included in S. 1795 as reported by the committee.

by the Director of the Bureau of the Budget, pursuant to section 3 of the Travel Expense Act of 1949, would apply.

Section 3 of the draft bill would amend section 1823 (a) of title 28, United States Code. This would bring the travel rates for civilian employees when traveling as witnesses on behalf of the United States under the Travel Expense Act instead of continuing them under separate legislation. The rates in both acts are now identical. The proposed amendment, however, would not make the proposed reimbursement of unusual expenses on an actual expense basis applicable to travel of employees to serve as witnesses. The existing authority of the Attorney General to issue regulations relating to this travel, as contained in section 1823 (a), would not be changed by this amendment. The Department of Justice suggested this change.

The draft bill does not propose any change in the mileage allowances authorized to be paid to Government employees for use of their privately owned motor vehicles, while traveling on official business. Information at hand does not indicate a need for change in such allowances.

It is difficult to estimate precisely the additional cost to the Government of the draft bill. The increase will result largely from the graduated scale of rates which will be used between the present $9 maximum and the proposed $13 maximum in those cases where $9 is now inadequate. However, it is believed that the total additional cost of the draft bill will not exceed a maximum of $30 million a year and its actual cost may be several million under this figure.

INADEQUACY OF TRAVEL ALLOWANCES

The Director of the Bureau of the Budget also submitted the following statement relative to the inadequacy of travel allowances authorized by existing law:

Regular civilian employees

The existing maximum per diem allowance for civilian employees while traveling within the limits of the continental United States is prescribed as $9 by the Travel Expense Act of 1949, as amended. This rate of $9 is the maximum allowable. Lower rates are authorized for trips in areas where the expenses necessarily incurred by travelers are less than in high cost areas.

The recommended maximum rate of $13 consists of approximately $7.30 for hotel room; $4.50 for meals; and $1.20 for incidental expenses. It is based upon the following considerations:

Hotel costs.—The hotel accounting firm of Harris, Kerr & Forster has found, upon a study of room rates of 375 hotels used by businessmen in traveling, that the average room rate for a single room during 1954 was $7.30. The hotel accounting firm of Horwath & Horwath, on the basis of an average sample of between 360 and 400 hotels, has advised that the average room rate for a single room during 1954 was between $6.70 and $6.95. These estimates of the two firms represent average room rates. The higher amount of $7.30 has been used since the recommended rate of $13 per diem represents not an average but a maximum allowable per diem.

Cost of meals.—The amount estimated for meals per day is $4.50, based upon an allocation of $1 for breakfast; $1.25 for luncheon; and $2.25 for dinner. Both hotel accounting firms report that the price of hotel restaurant meals has increased approximately 20 percent since 1949.

Incidental expenses.—The amount, averaging $1.20 per day, is intended to cover such items of expense as tips and fees while traveling; hotel tips; tips to waiters; laundry; cleaning and pressing; telegrams for room reservations; etc. These miscellaneous expenses have also increased in recent years. The Bureau of Labor Statistics reports, on the basis of a study of prices in 34 large cities until 1952 and in 46 cities since that time, that the cost of dry cleaning and pressing has increased 13.2 percent between June 1949 and September 1954; and that the cost of laundry has increased 18.3 percent during the same period. In view of the higher costs of meals, the amounts for tips have correspondingly increased.

Individuals serving without compensation

The existing maximum per diem rate of $10 is prescribed in section 5 of the Administrative Expenses Act of 1946 for individuals serving the Government without compensation and applies while they are away from home or regular places of business. Since these individuals generally serve as consultants for short periods of time and serve without receiving any compensation, a higher

maximum rate of per diem than that prescribed for regular employees has been allowed in the past. In view thereof, the maximum rate of $15 is recommended for these individuals. Section 5 of the Administrative Expenses Act of 1946 provides that a rate higher than that prescribed therein may be authorized in specific legislation. The rate of $15 was provided in the Defense Production Act of 1950. The 83d Congress authorized the $15 rate for members of the President's Advisory Committee on Government Organization; members of the National Capital Planning Commission who serve without compensation; and individuals serving without compensation in an advisory capacity under the item "International contingencies" in the Department of State appropriation acts for the fiscal years 1954 and 1955. A per diem rate not in excess of $25 has been provided for individuals serving without compensation on advisory committees under title VI of the Housing Act of 1949 and under the Housing Act of 1954. The 83d Congress also increased to $15 the per diem rate for Federal judges and justices which had been established at $10 in 1940.

Special form of reimbursement for unusual circumstances [1]

The provision in the first section of the draft bill, authorizing reimbursement on an actual expense basis in lieu of the per diem basis, is proposed for use in a very limited number of situations. Occasionally employees are required to travel on assignments which necessitate personal expenditures well in excess of the reimbursement which would be obtained at the $13 per diem rate. Attendance at meetings or conventions of private business or industry which are held at expensive hotels is an example. Government representatives attending these meetings in furtherance of their official duties have no choice but to stay at the convention hotel where even the cheapest rooms may exceed the entire per diem. Likewise these representatives are required to take their meals at these hotels. A similar situation where expensive hotels must be used arises at times when Secret Service agents travel with the President and must stay at the hotel in which he stays. Likewise unusually high rates are encountered from time to time when an employee must travel to a locality in which a disaster has occurred or must travel at a particular time to a city when only the more expensive hotel rooms are available due to conventions. As set forth in the draft bill, this type of travel would be governed by regulations of the Director of the Bureau of the Budget and under conditions prescribed by department heads. Also a maximum allowable amount of reimbursement would be determined in advance of the trip and would set forth in the order directing the employee's travel. The employee would be reimbursed for his actual and necessary expenses not in excess of the maximum stated in his travel order.

Mileage allowances

No changes in mileage allowance rates are proposed for the following reasons: The American Automobile Association in its Information Bulletin No. 92 of August 4, 1954, reported on the practice of private business in compensating their employees for use of personal cars on company business. The report contains a listing of flat mileage allowances used by private business firms as compiled by the Dartnell Corp., Chicago, Ill. Of the total firms covered by the Dartnell survey, 28 percent reimbursed employees for use of their automobiles at a rate less than 7 cents a mile; 45 percent at the 7-cent rate; 5 percent between 7 and 8 cents; 16 percent at 8 cents; and 3 percent at 9- and 10-cent rates. The weighted average allowance as reported by Dartnell was 7.01 cents.

More recent information has been obtained from the AAA giving a breakdown of cost figures for the operation of an automobile as prepared by Runzheimer & Co., Chicago cost-accounting firm. The breakdown for a postwar model car in the $2,000 price class, driven up to 18,000 miles per year, shows that variable costs (gasoline, oil, maintenance, and tires) average 3.54 cents per mile while the fixed costs (insurance, license fees, depreciation) average about $1.65 per day. On a mileage basis for the entire year the total cost to a car owner would be approximately 6.86 cents per mile. This amount for a comparable car, driven only approximately 10,000 miles a year, was given as 9.52 cents per mile. These rates, of course, vary with the mileage driven, the class of car, and the type of driving conditions generally encountered by the individual during a year, whether in mountainous or flat country or in congested metropolitan centers or rural areas.

Since the rate of 7 cents per mile still appears to be the rate most commonly used by companies which have followed the flat mileage method, no change is recommended for the Federal Government.

[1] Not included in S. 1795, as reported by the committee.

SUMMARY

On the basis of these reports and the supporting evidence, it is recommended that the present maximum per diem allowance of $9 should be increased to $13 as a matter of equity, so that Federal employees in travel status will be able to defray normal travel expenses in metropolitan or other high-cost areas.

The committee strongly emphasizes, however, that, in accordance with the provisions of the Travel Expense Act of 1949, as amended, the increase in per diem allowance recommended herein will not be mandatory but would authorize reimbursement up to and including $13 a day only when the cost of living in the areas where travel is to be performed justifies the payment of that amount. This is presently recognized in the Standardized Government Travel Regulations which provide in part as follows:

> The per diem allowances provided herein represent the maximum allowable, not the minimum. It is the responsibility of the departments and establishments to see that travel orders authorize only such per diem allowances as are justified by the circumstances surrounding the travel. To this end, care should be exercised to prevent the fixing of a per diem allowance in excess of that required to meet the necessary authorized expenses.

Information submitted to the committee indicates that agencies are setting rates below the maximum when a lower rate is deemed adequate to cover a specific trip. The committee has been given assurances that this same general policy would be adhered to in the application of the new maximum contained in S. 1795, if approved by the Congress. For example, the Department of Commerce has 10 different rates, ranging from a minimum of $2.40 to the present maximum of $9. The Department of Agriculture has 30 different rates, ranging from a $1 minimum. In the fiscal year 1953, only 15.8 percent of the total domestic travel in Agriculture was performed at the maximum rate. This is because a large part of the travel is in rural areas. An analysis of travel vouchers made by the Department of the Army for the month of April 1953 indicated that 55 percent of the travel was at the maximum rate and the remainder at lower rates.

In view of the foregoing, and the fact that the Congress has in several instances recognized the need for an increase over the present maximum by special enactments, the committee recommends the approval of S. 1795. It constitutes a fair and equitable adjustment in subsistence to permit refunds of out-of-pocket expenses incurred by Federal employees in travel status, based on evidence submitted to the committee which clearly shows that increases in hotel, food, and other costs since 1949 warrant such action.

The maximum subsistence allowance payable to Federal judges and justices was established at $10 a day in 1940, and, based on recognized increases in travel costs since that time, the per diem was increased to $15 by Public Law 222, approved August 8, 1953. The Congress held, when it took such action, that most of the judges and justices could not, in many instances, pay for meals, lodging, and incidental expenses incurred in moderately priced hotels while on judicial business, under the then authorized maximum, without drawing on their personal funds.

Specific authority has also been included in appropriations acts, and in other enabling statutes authorizing payments of up to $25 per day

in lieu of subsistence for official travel performed by certain groups of executives, consultants, experts, and other officials. For example, under Public Law 108, 83d Congress, members of the Hoover Commission may receive reimbursement for official travel on an actual expense basis, and members of the President's Advisory Committee on Government Organization, who serve without compensation, are paid up to $15 a day for subsistence. Also, consultants appointed to advisory committees of the Housing and Home Finance Agency, pursuant to title 6 of the Housing Act of 1949, may be paid not to exceed $25 per day, and members of the National Capital Planning Commission who serve without compensation are reimbursed at the rate of $15 a day in lieu of subsistence. There are other instances where the Congress has recently authorized payments in lieu of subsistence to members of various study commissions, who serve without compensation, at rates not to exceed $25 per day. The Career Incentive Act of 1955 (Public Law 20, 84th Cong.) authorized an increase in the per diem allowance in lieu of subsistence for military personnel, from $9 to $12 (sec. 2 (11)).

MILEAGE ALLOWANCES

This bill does not propose any change in the mileage allowances authorized to be paid to Government employees for use of their privately owned motor vehicles, while traveling on official business. The Bureau of the Budget, in submitting this proposed legislation, recommended that the present law remain unchanged as it relates to such travel expenses. For this reason, the adequacy or inadequacy of the existing rate of 7 cents a mile allowed for use of privately owned automobiles or airplanes and 4 cents a mile for privately owned motorcycles was not considered by the committee.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (matter omitted in brackets; new material in italics; existing law in which no change is reported, shown in roman):

TRAVEL EXPENSE ACT OF 1949

(63 Stat. 166, as amended; 5 U. S. C. 836)

* * * * * * *

SEC. 3. Civilian officers and employees of the departments and establishments (except justices and judges covered by section 456 of title 28 of the United States Code), while traveling on official business and away from their designated posts of duty, shall be allowed, in lieu of their actual expenses for subsistence and all fees or tips to porters and stewards, a per diem allowance to be prescribed by the department or establishment concerned, not to exceed the rate of [$9] *$15* within the limits of the continental United States and in case of travel beyond the limits of the continental United States not to exceed rates established by the Director of the Bureau of the Budget for the locality in which the travel is performed: *Provided*, That such civilian officers and employees who become incapacitated due to illness or injury, not due to their own misconduct, while traveling on official business and away from their designated posts of duty, shall be allowed such per diem allowances, and transportation expenses to their designated posts of duty, in accordance with regulations promulgated and approved under this Act.

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THE ADMINISTRATIVE EXPENSES ACT OF 1946

(60 Stat. 808; 5 U. S. C. 73B-2)

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SEC. 5. Persons in the Government service employed intermittently as consultants or experts and receiving compensation on a per diem when actually employed basis may be allowed travel expenses while away from their homes or regular places of business, including per diem in lieu of subsistence while at place of such employment, in accordance with the Standardized Government Travel Regulations, sections 73a, 821-823, and 827-833 of this title, and persons serving without compensation or at $1 per annum may be allowed, while away from their homes or regular places of business, transportation in accordance with said regulations and section 73a of this title, and not to exceed [$10 per diem] *$15 per diem within the limits of the continental United States and, beyond such limits, not to exceed the rates of per diem established by the Director of the Bureau of the Budget pursuant to section 3 of the Travel Expense Act of 1949, as amended (5 U. S. C. 836)*, in lieu of subsistence en route and at place of such service or employment unless a higher rate is specifically provided in an appropriation or other Act.

* * * * * * *

TITLE 28, UNITED STATES CODE

§ 1823. United States officers and employees.

(a) Any officer or employee of the United States or any agency thereof, summoned as a witness on behalf of the United States, shall be paid his necessary expenses incident to travel by common carrier, [and if travel is made by privately owned automobile mileage at a rate not to exceed 7 cents per mile, together with a per diem allowance not to exceed $9 in lieu of subsistence] *or, if travel is made by privately owned automobile, at a rate not to exceed that prescribed in section 4 of the Travel Expense Act of 1949, together with a per diem allowance in lieu of subsistence not to exceed the rates of per diem as prescribed, in, or established pursuant to, section 3 thereof* under regulations prescribed by the Attorney General. * * *

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LEGISLATIVE-JUDICIARY APPROPRIATION ACT, 1955

(68 Stat. 399)

TITLE I—LEGISLATIVE BRANCH

SENATE

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CONTINGENT EXPENSES OF THE SENATE

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Inquiries and investigations: * * * *Provided*, That no part of this appropriation shall be expended for per diem and subsistence expenses (as defined in the Travel Expense Act of 1949) at rates in excess of [$9] *$13* per day except that higher rates may be established by the Committee on Rules and Administration in the case of travel beyond the limits of the continental United States.

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Calendar No. 359

84TH CONGRESS, 1st Session | SENATE | REPORT No. 354

EXTENDING TITLE II, FIRST WAR POWERS ACT, 1941

MAY 17 (legislative day, MAY 2), 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4052]

The Committee on the Judiciary, to which was referred the bill (H. R. 4052) to amend the act of January 12, 1951, as amended, to continue in effect the provisions of title II of the First War Powers Act, 1941, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to extend the termination date of title II of the First War Powers Act of 1941 to June 30, 1957. Under present law, title II would expire on June 30 of this year.

STATEMENT

Under the provisions of title II, the President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the national defense effort to enter into contracts and into amendments or modifications of contracts and to make advance, progress, and other payments thereon, without regard to the provisions of the law relating to the making, performance, amendment, or modification of contracts, whenever he deems such action would facilitate the national defense, subject, however, to the additional provisions set forth in title II. Pursuant thereto the President has conferred the powers authorized in title II upon the heads of a number of executive departments and agencies, including the Departments of Defense, Army, Navy, Air Force, Commerce, Agriculture, and Interior, the Atomic Energy Commission, the National Advisory Committee for Aeronautics, the Government Printing

Office, the General Services Administration, the Tennessee Valley Authority and the Federal Civil Defense Administrator.

The continuation of the effectiveness of these emergency powers has been and will continue to be of important assistance to the authorized departments and agencies of the Government in the prosecution of the national mobilization program, either in current procurement activities or as standby authority which may be exercised during a period of exigency arising out of the defense effort. Under the act, executive departments and agencies are empowered to amend or modify Government contracts without additional consideration, where, for example, an actual or threatened loss on a defense contract will impair the productive capacity of a contractor whose continued existence is needed for the national defense. Officials likewise may make advance payments on contracts to be executed in futuro or extend delivery dates where authorized. Mistakes and ambiguities in contracts may be rectified, and indemnity payments may be guaranteed for otherwise noninsurable risks. Without this authority, it would be impossible for the various procurement agencies to use the special procurement techniques required in situations of military or production urgency, which other permanent laws are not designed to afford.

Title II was reactivated for the Korean emergency by the act of January 12, 1951. Each year thereafter it has been extended. This legislation provides for a 2-year extension of the automatic termination date to June 30, 1957. Of course, in addition to the termination date there remains the possibility of title II terminating at any time Congress by concurrent resolution or the President designate.

The executive communication from the Department of the Navy and the departmental reports on the bill are here inserted and made a part of this report.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D. C., February 7, 1955.

Hon. SAM RAYBURN,
Speaker of the House of Representatives,
Washington, D. C.

MY DEAR MR. SPEAKER: There is forwarded herewith a draft of legislation, to amend the act of January 12, 1951, as amended, to continue in effect the provisions of title II of the First War Powers Act, 1941.

This proposal is part of the Department of Defense legislative program for 1955, and the Bureau of the Budget has advised that it is in accord with the program of the President. The Department of the Navy has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The proposed legislation would amend section 2 of the act of January 12, 1951 (64 Stat. 1257; 50 U. S. C. App. 611, note), as amended (Public Law 426, 82d Cong., and Public Laws 97 and 443, 83d Cong.), so as to continue the effectiveness of title II of the First War Powers Act, 1941, for the duration of the national emergency proclaimed December 16, 1950, or until June 30, 1957, whichever is earlier. Public Law 443 of the 83d Congress last extended that authority until June 30, 1955. This 2-year extension of title II of the First War Powers Act, 1941, was urged by the President in his state of the Union message (p. 6, H. Doc. No. 1, 84th Cong.).

Under the provisions of the existing law the President may authorize any department or agency of the Government exercising functions in connection with

the prosecution of the national defense effort to enter into contracts and into amendments or modifications of contracts and to make advance, progress and other payments thereon, without regard to the provisions of the law relating to the making, performance, amendment or modification of contracts whenever he deems such action would facilitate the national defense, subject, however, to the additional provisions which are set forth in title II of the First War Powers Act, 1941.

Also by the authority of that title, the Department of Defense is empowered to amend contracts without consideration. This includes the extension of the time of performance of contracts and the waiver of liquidated damages and performance bonds by the United States. The Department of Defense is currently authorized to make advance payments on advertised contracts. Without the authority granted by title II of the First War Powers Act, 1941, the Department of Defense could make advance payments only on negotiated contracts.

The exercise of title II authority permits the defense agencies to make the necessary adjustments to assure the continued availability of essential productive capacity. Without this authority, it will be impossible to use the special procurement techniques necessary and proper in situations of military or production urgency, which other permanent laws are not designed to afford. It is believed that the extension of title II of the First War Powers Act, 1941, as amended, is vitally necessary in order to supplement other contract authority and to insure an uninterrupted performance of contracts to facilitate the national defense.

COST AND BUDGET DATA

The enactment of this legislation would cause no apparent increase in budgetary requirements insofar as the Department of Defense is concerned.

Sincerely yours,

C. S. THOMAS.

GENERAL SERVICES ADMINISTRATION,
Washington, D. C., March 18, 1955.

Re bill H. R. 4052

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN CELLER: Your letter of March 3, 1955, requested an expression of the views of GSA regarding H. R. 4052, a bill to amend the act of January 12, 1951, as amended, to continue in effect the provisions of title II of the First War Powers Act, 1941.

Under title II of the First War Powers Act, 1941, as amended, the President may authorize any department or agency of the Government exercising functions in connection with national defense to enter into contracts and into amendments or modifications thereof, and to make advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever such action would facilitate national defense.

As the law now stands, title II will remain in force during the national emergency proclaimed by the President on December 16, 1950, or until such earlier time as the Congress by concurrent resolution or the President may designate, but in no event beyond June 30, 1955. The amendment proposed by H. R. 4052 would merely extend the ultimate termination date from June 30, 1955, to June 30, 1957. This 2-year extension was urged by the President in his address on the state of the Union (H. Doc. No. 1, 84th Cong., 1st sess., p. 6).

GSA regards the authority provided by title II of the First War Powers Act, 1941, as essential in connection with the defense activities of this Administration in order to meet varying situations arising during the present national emergency. Accordingly, we strongly recommend enactment of this bill.

The Bureau of the Budget has no objection to the submission of this report.

AL E. SNYDER,
Acting Administrator.

SMALL BUSINESS ADMINISTRATION,
Washington, D. C., March 18, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: This will acknowledge with thanks receipt of your letter of March 3, 1955, enclosing therewith copies of H. R. 4052, a bill to amend the act of January 12, 1951, as amended, to continue in effect the provisions of title II of the First War Powers Act, 1941, requesting an expression of our views on this legislation.

In light of the President's policy that this act be extended and because the Small Business Administration believes that flexibility in procurement is desirable, it is our position that title II of the First War Powers Act be extended as is provided for in H. R. 4052. The Bureau of the Budget has no objection to presentation of this report.

Sincerely yours,

WENDELL B. BARNES,
Administrator.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 16, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter of March 3, 1955, acknowledged by telephone on March 7. You request an expression of our views on H. R. 4052, a bill to extend to June 30, 1957, the provisions of title II of the First War Powers Act, as amended.

Title II of the First War Powers Act gives the President power to authorize any agency of the Government which is exercising functions connected with the national defense to make or modify contracts without regard to other laws relating to Government contracts whenever such action will facilitate the national defense. Advance and progress payments to contractors are also authorized.

We consistently have opposed similar annual extensions of the provisions of title II on the basis that the economic conditions attending Government procurement did not justify the continuation of such extraordinary authority. Considering the intended purpose of the title II powers and the manner in which they are now being administered, however, we have no objection to the extension of such powers as proposed by H. R. 4052.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT OF JANUARY 12, 1951 (PUBLIC LAW 921, 81ST CONG. (64 STAT. 1257), AS AMENDED)

* * * * * * *

SEC. 2. Title II of such Act, as amended, shall remain in force during the national emergency proclaimed by the President December 16, 1950, or until such earlier time as the Congress by concurrent resolution or the President may designate but in no event beyond June 30, [1955] *1957*.

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